

FILED
HARRISBURG, PA

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

APR 15 2008

MARY E. D'ANDREA, CLERK
Per Deputy Clerk

**RICHARD H. MIDDLETON, Jr.,
Movant,**

Case No. 1:CR-00-228-02

v.

MOTION

**UNITED STATES OF AMERICA,
Respondent.**

**REDUCTION OF SENTENCE
18 U.S.C. § 3582(c)(2)**

COMES NOW RICHARD H. MIDDLETON, Jr., ("Movant") pro se and moves this Honorable Court pursuant to 18 U.S.C. § 3582(c)(2), and Amendment 709 of the United States Sentencing Guidelines ("USSG"), to reduce his sentence.

STATEMENT OF CASE

Procedural posture:

In March of 2001, after a plea of guilty, movant was sentenced to a 200 month federal prison sentence for Carjacking in violation of 18 U.S.C. § 2119, and Bank Robbery in violation of 18 U.S.C. § 2113(a). Movant did not take a direct appeal nor has movant filed for collateral relief pursuant to 28 U.S.C. § 2255.

MEMORANDUM IN SUPPORT

On November 1, 2007, Amendment 709 became effective. The Amendment addresses the use of misdemeanors and petty offenses in determining a defendant's criminal history score. Essentially, the Amendment responds to concerns that (1) some misdemeanor and petty offenses counted under the guidelines involve conduct that is not serious enough to warrant increased punishment upon sentencing for a subsequent offense; (2) the presence of a prior

misdemeanor or petty offense in a rare case, as in the instant matter, can effect the sentence in the instant offense in a way that is greatly disproportionate to the seriousness of the prior offense.

In the case at bar movant had just turned 18 years old when indicted in the Middle District of Pennsylvania for the instant offenses. For sentencing purposes, the probation department used two (2) prior juvenile convictions in calculating movant's criminal history category ("CHC"); see, presentence report ("PSR") ¶'s 58 & 59.

Movant was assessed two (2) criminal history points under §58. Paragraph 58 is a juvenile conviction for Theft. The PSR narrative regarding this conviction clearly states that movant was 14 years old when he and another took a registration plate from a vehicle. While not minimizing the seriousness the transgression, there is a question of the degree of violation, i.e., there is no indication from the PSR narrative whether the violation is a felony, which would seem unlikely; or, if the violation was a misdemeanor; instead, there is a brief two sentence description regarding the offense, and while not dispositive in connection with criminal history points, the probation department devotes an entire descriptive paragraph of movant's problems in juvenile home placement subsequent to the conviction in ¶58. At any rate, ¶58 would seem to fall squarely under Amendment 709's concerns regarding conduct upon the instant sentencing.

Paragraph 59 of the PSR indicates that movant was assessed 1 criminal history point pursuant to § 4A1.2(d)(2)(B), for Conspiracy/Burglary. (See PSR, page 10). Movant was seventeen years of age when this offense and conviction took place. Again, not to minimize the seriousness of the crime, after reading the conduct described in ¶59 it appears, more than likely, the crime was one of youthful folly rather than a crime with serious criminal intent. Nonetheless, the probation department seems intent on describing what took place while movant was on probation for the conduct rather than the conduct of offense. At any rate, there has been no formal disposition of the case as described in ¶59, therefore, movant contends this conduct too falls under the parameters of Amendment 709.

In the case at bar, movant's CHC was determined to be IV. This category was based on a finding of 9 criminal history points, which 3 of the 9 points were the result of ¶'s 58 & 59. Movant's total offense level was determined to be 33. An offense level 33 together with a CHC IV exposed movant to prison sentence of 188-235 months, ultimately movant was sentenced to 200 months. If this Court were to apply Amendment 709 to the instant case and deduct the 3 point total for ¶'s 58 & 59, movant's CHC would be III with a prison exposure of 168-210 months. Considering that movant's instant sentence of 200 months is in the middle range, if Amendment 709 were applied movant could reasonably expect and this Court could resentence movant to 180 months (middle range), or 168 months (low end), or even below the guideline range.

RELEVANT FACTORS FOR CONSIDERATION OF SENTENCE REDUCTION

The factors to be considered in conjunction with the now advisory guidelines when a court imposes a prison sentence are found in 18 U.S.C § 3553(a).

Section 3553(a) provides in relevant part

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

(A) to reflect the seriousness of the offense to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

(3) the kinds of sentences available;

18 U.S.C. § 3553(a) (West Supp. 2007)

In the case sub judice if the instance sentence were reduced pursuant to Amendment 709 it would satisfy all § 3553(a) factors with emphasis on factor (D). Attached to this Motion are copies of educational, psychological, and vocational certificates of completion which movant has diligently pursued since his incarceration. Additionally, there is a copy of a letter from the victims of movant's criminal conduct which both forgives and commends movant for his post-rehabilitative efforts.

Finally, there is the relevant factor of movant's youth and his home life. At movant's initial probation interview for presentence purposes he intimated that his family life was favorable with no family dysfunction (see PSR, ¶'s 75-77, pages

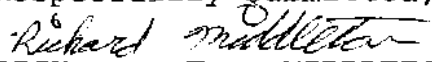
14-15), however, as both attached affidavits indicate, this was far from the truth. Movant was under constant emotional and physical abuse at the hands of his crack addicted father, and would have admitted this to the probation interviewer if not for the fear that siblings would suffer and he would, somehow, suffer further abuse.

As noted movant's significant youthfulness while not a factor in 2001, the year of the instant sentencing, can be looked upon as a factor for a downward departure in 2008 if this Court were to apply Amendment 709 in the instant matter.

CONCLUSION

Movant takes the position he has demonstrated that Amendment 709 applies to his case. Moreover, movant prays that in the interest of justice that this Court reduce his sentence to the low end range of 168 months or lower.

Respectfully submitted,


RICHARD H. MIDDLETON, Jr.
#10249-067

cc: clerk of court

U.S. Attorney's Office
Harrisburg, PA

file(gls)

IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD H. MIDDLETON, Jr.

v.

UNITED STATES OF AMERICA

§
§ CASE NO. 1:CR-00-228-02
§ AFFIDAVIT: 28 U.S.C. § 1746
§ RICHARD H. MIDDLETON, Jr.
§
§

I, RICHARD H. MIDDLETON, Jr., swear under the penalty of perjury that the foregoing statements are truthful and correct.

Executed on _____.

I swear that when I was interviewed by the U.S. probation department regarding my presentence report and my sentencing in the above captioned case, I was not truthful in a number of relevant areas. Specifically, in Item #76 of my presentence report ("PSR") I told the interviewer that I had a favorable upbringing and home life in a middle income family with no noted dysfunction. Truthfully, my father, RICHARD MIDDLETON, Sr., was a crack addict and this was known to me, my mother, and my siblings. My father's addiction was constant source of money loss and family disruption. Since my federal incarceration my father has been incarcerated for crimes directly related to his addiction problems. My father's addiction directed the daily events in my family routine and to a great extent contributed to my criminal conduct.

The reason that I was untruthful during my PSR interview is because I was afraid that if the truth were known about how dysfunctional my family was that Children & Youth Services would take my sisters away from my parents. Additionally, even though I was in jail, I felt that if my father found out I had told the truth regarding his drug problems there was a good possibility he would find a way to physically abuse me.

Respectfully submitted,

Richard Middleton
RICHARD H. MIDDLETON, Jr.
#10249-067

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD H. MIDDLETON, Jr.

v.

UNITED STATES OF AMERICA

§

CASE NO. 1:CR-00-228-02

§

AFFIDAVIT: LINDA LEE MIDDLETON

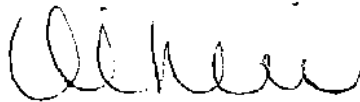
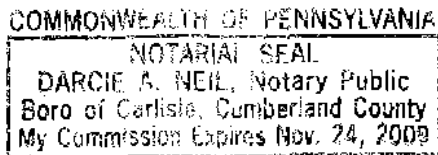
§

§

I LINDA LEE MIDDLETON swear that RICHARD H. MIDDLETON, Jr., is my biological son. I further swear that his father RICHARD H. MIDDLETON, Sr., was a crack addict. This addiction had adverse effects on my son's family life as well as his outside life. At no time when his father was at home was our house considered a normal home. Richard's father physically abused him at times because of his addiction. I personally know that Richard did not tell the probation people about his true family life because he was afraid that I and his father would lose custody of his sisters.

Executed on

3-24-08


LINDA LEE MIDDLETON



UNITED STATES GOVERNMENT

MEMORANDUM

FEDERAL CORRECTIONAL INSTITUTION
ALLENWOOD, PA.

DATE: 10-28-2003

REPLY TO: *C. Moser*
ATTN. OF: Christopher J. Moser, Correctional Counselor

SUBJECT: Achievement Recognition

TO: Whom it may concern

THE PURPOSE OF THIS MEMORANDUM IS TO RECOGNIZE THE TREMENDOUS AMOUNT OF TIME AND EFFORT THAT INMATE RICHARD MIDDLETON PUT FORTH INTO TWO SEPARATE INSTITUTIONAL PROGRAM CALLED "KEEPING IT REAL" THAT RAN FOR 9 MONTHS AND ANOTHER INSTITUTIONAL PROGRAM CALLED "YOUNG ADULT DETERRENCE PROGRAM" WHICH HAS BEEN RUNNING FOR THE PAST 3 YEARS. THIS PROGRAM IS OFFERED TO THE AT-RISK YOUTH IN OUR SURROUNDING COMMUNITY. MR. MIDDLETON HAS BEEN A DEDICATED MEMBER OF BOTH PROGRAMS AND IS CURRENTLY THE LEAD FACILITATOR. MR. MIDDLETON WAS SELECTED FOR HIS WILLINGNESS TO MAKE WHATEVER SACRIFICES NECESSARY TO MAKE THE PROGRAM A SUCCESS.

IN MY OPINION, MR. MIDDLETON HAS EXHIBITED HIGH ACHIEVEMENT IN EDUCATING INMATES AND THE AT-RISK YOUTH IN THE FOLLOWING AREAS:

IMAGE
SELF-AWARENESS
SELF-ESTEEM
LIFE SKILLS
CULTURE DIVERSITY
PROBLEM SOLVING
CHANGE

CRIME AND PUNISHMENT
SOCIAL RESPONSIBILITY
FAMILY AND FRIENDS
CAREERS
DRUGS AND ALCOHOL

MR. MIDDLETON IS A PLEASURE TO WORK WITH AND SHOWS VAST AMOUNTS OF PATIENCE WHILE WORKING WITH THE INMATES AND YOUTH IN THE PROGRAMS AND THE ADMINISTRATION. MR. MIDDLETON HAS DEDICATED HIS TIME AND EFFORT INTO MAKING THE "KEEPING IT REAL" AND "YADP" PROGRAMS A REAL SUCCESS. HE HAS DEDICATED MOST OF HIS FREE TIME INTO GATHERING INFORMATION THAT HAS PROVEN VITAL TO THE PROGRAM, HE HAS WILLINGLY GONE OUT OF HIS WAY IN ORDER TO HELP THE OTHER PROGRAM PARTICIPANTS. WITHOUT MR. MIDDLETON AND THE OTHER PROGRAM FACILITATORS, THE PROGRAMS WOULD NOT BE WHERE IT IS TODAY.

4/14/03

Dear Ricky Middleton;

We have received your letter and wish to assure you, we forgive you, as we know God does also. He always does when your request is sincere, and we believe yours definitely is.

Your effort with Y.A.D.P. is commendable. We hope you will continue with that program.

Please continue to pray for us and we will for you.

Sincerely,

Mr. & Mrs. Bacon

Certificate of Completion

awarded to:

Richard Middleton Jr.

Successful Seminar Completion 2.0 hrs.

From The Crack House to The White House

"Patience and perseverance have a magical effect before which difficulties disappear and obstacles vanish."

FCI Marianna

March 19, 2008

Date

Deleena L. Caldwell, Ph.D.
Psychology Services Dept.

Les Brown's YOU DESERVE!

(2 Hour Seminar)

"Just about anything you desire can be yours if you put forth the energy, time, effort, and tenacity to go after it."

Presented to:

Richard Middleton Jr.

February 29, 2008

Deborah L. Willis, Psy.D.
Deborah L. Willis, Psy.D.
Chief Psychologist



PRISON
FELLOWSHIP
Ministries

In recognition of participation in the seminar;

" LOVING OTHERS "

RICHARD MIDDLETON

a child of God, is hereby awarded this

Certificate of Participation

*"Be strong in the Lord and in his great power. Wear the full armor of God.
Wear God's armor so that you can fight against the devil's evil tricks."*

Ephesians 6:10-11 New Century Version

Charles W. Colson

Charles W. Colson

William J. Hoop

Chaplain

Helen A. Carpenter

Instructor

July 4, 2001

Date



PRISON
FELLOWSHIP®
Ministries

In recognition of participation in the seminar,

"Love and War"

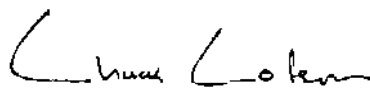
Richard Middleton

a child of God, is hereby awarded this

Certificate of Participation

"Be strong in the Lord and in his great power. Wear the full armor of God.
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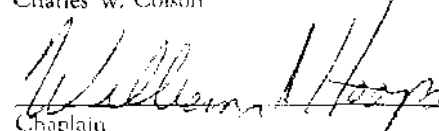
Ephesians 6:10-11 New Century Version



Charles W. Colson



Instructor



Chaplain



Date



PRISON
FELLOWSHIP[®]
Ministries

In recognition of participation in the seminar,

GROWING IN CHRIST

RICHARD MIDDLETON

a child of God, is hereby awarded this

Certificate of Participation

*"Be strong in the Lord and in his great power. Wear the full armor of God.
Wear God's armor so that you can fight against the devil's evil tricks."*

Ephesians 6:10-11 New Century Version

Charles W. Colson

Charles W. Colson

William Hooper

Chaplain

Linda Meckley

Instructor

1/26/02

Date

CERTIFICATE OF APPRECIATION

YOUNG ADULT DETERRENCE PROGRAM

This certificate is given to:

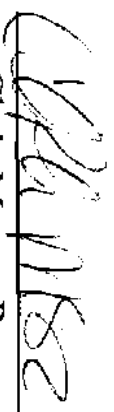
In appreciation for the contributions in helping to change the

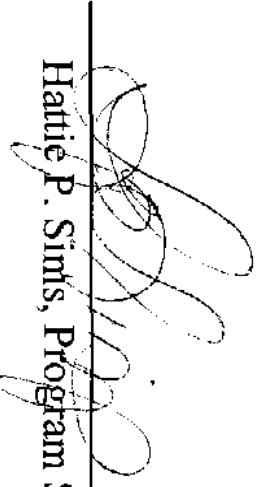
lives of the young men who participate in

The Young Adult Deterrence Program.

You have helped to make a difference in other's lives.

Presented on June 2002


Chris Moser, Program Coordinator


Hattie P. Simts, Program Supervisor

CERTIFICATE OF ACHIEVEMENT

This certifies that

Richard Mitchell

has satisfactorily completed

C.D.I.

This certificate is hereby issued this 17th day of December 2002.

ACE Coordinator

S. Seckel Acting

Education Supervisor

J. Hile Acting

THIS CERTIFICATE OF COMPLETION
IS AWARDED TO

RICHARD MIDLETON

FOR ATTENDING

3 HOURS ON February 15, 2001

SPONSORED BY

PERRY HUMAN SERVICES AT THE PERRY COUNTY PRISON

ON Chemical Abuse and Domestic Violence.

Glen D. Johnson Sr.
INSTRUCTOR

Newport Business Institute

Williamsport, Pennsylvania
Continuing Education Center



Federal Register # 10249-067

First Name: R

07-Mar-06

Last Name: Middleton

Learning Site:

F.C.I.-Allenwood

Term	Class	Letter Grade	Credits	Credits Earned	Points
------	-------	--------------	---------	----------------	--------

Fall 2005

Accounting 101
Business Law 101A
A3
33
3
312
12
0

Term Credits 6

Term Points 24

Term GPA

4.00

Michael J. Chom

Authorized Signature

Total Credits 6

Total Points

24

QPA

4.00

CERTIFICATE OF ACHIEVEMENT

This certificate is awarded to

Richard Middleton

For successful completion of the ACE Class

Small Business



M. McKinnison, ACE Coordinator

Date

3-8-08

J. Zielinski, Supervisor of Education

Date

3/17/08



CERTIFICATE OF ACHIEVEMENT

THIS CERTIFICATE IS PRESENTED TO

Richard Middleton

FOR SUCCESSFUL COMPLETION OF
BREAKING BARRIERS

M. Billembender
M. Billembender, Certified Facilitator
Date: *4/5/07*

J. Zelinski
J. Zelinski, Certified Facilitator
Date: *4/5/07*
J. Zelinski, Supervisor of Education
Date: *4/6/07*

CHANGE IS AN INSIDE JOB!
IF IT'S TO BE...IT'S UP TO ME!

Certificate of Achievement

This certificate presented to:

Richard Middleton

10249-067

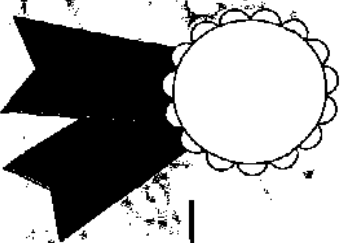
Has successfully completed the requirements of:
40 HOUR DRUG EDUCATION PROGRAM

August 2, 2001

Date

Michael R. Gilder M.S.Ed., C.A.C.

Michael R. Gilder



This Certifies that

Richard H. Middleton

has completed a NOCTI Competency Assessment in the field of Carpentry

and is awarded this

Certificate of Completion

for participation in the occupational testing program conducted

in accordance with the standards of NOCTI and F.C.I. Allenwood

on this 28th day of July, 2005

David A. Stevens
Supervisor of Education

David A. Stevens
Vocational Training Instructor

John C. Foster
John C. Foster, Ph.D., President/CEO
National Occupational Competency Testing Institute



500 North Bronson Avenue
Big Rapids, Michigan 49307

Participant Score Report
Carpentry

Participant Name: MIDDLETON RICHARD H
Participant ID: 3819264285

Level: Post-Secondary
Site: FCI - Allenwood

State: Pennsylvania
Date: 5/31/2005

Written Test

Test	Pre-Test	Post-Test	% Change	Group	Site	State	Nation
Hand Tools	9.1	63.6	54.5	74.5	74.8	73.5	75.0
Power Tools	0.0	75.0	75.0	70.6	70.3	71.0	75.5
Blueprints & Specifications	0.0	100.0	100.0	82.7	74.5	72.1	79.3
Building Materials & Fasteners	14.3	85.7	71.4	71.3	71.1	69.8	70.9
Measuring & Layout Operations	18.2	72.7	54.5	71.7	69.7	68.1	70.7
Foundation, Form & Concrete	0.0	68.2	68.2	70.3	68.7	63.7	67.7
Rough Framing	0.0	92.3	92.3	86.8	80.7	76.0	75.4
Exterior Finish	8.3	91.7	83.4	88.3	80.5	72.3	70.7
Interior Finish	12.5	100.0	87.5	92.5	84.2	81.8	80.0
Basic Mathematics	35.7	85.7	50.0	63.8	80.7	78.0	77.1
Interior System Installation	0.0	50.0	50.0	66.7	70.9	64.0	67.9

Participant Score Report
Carpentry

Participant Name: MIDDLETON RICHARD H
Participant ID: 3819264285

Level: Post-Secondary
Site: FCI - Allenwood

State: Pennsylvania
Date: 5/31/2005

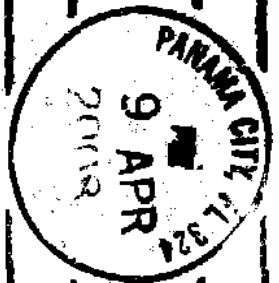
Performance Test

Test	Participant	Group	Site-Cumulative	Site	State	Nation
Tool & Material Identification	91.4	78.3	78.7	79.7	81.4	82.8
Square Layout	88.0	84.5	88.3	88.6	81.9	85.6
Builder's Level	88.0	87.1	86.0	95.5	80.6	78.1
Blueprint Reading/Sole Plate Layout	81.3	63.4	67.0	66.5	65.0	66.1
Rafter Layout	100.0	87.1	82.7	82.8	79.1	77.8
Stairway Stringer	100.0	79.9	80.8	81.2	79.6	77.4
Interior Window Frame	76.4	79.3	78.5	79.3	76.7	71.5
Total	88.5	78.8	79.7	79.6	76.8	75.6

NOTE: All values represent % scored correct

Federal

P.O. Box 7007
Marianna, FL 32447



U.S. District Court

Office of the Clerk

P.O. Box 983

228 Walnut St.

Harrisburg, PA 17108